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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 Cary Peterson,

7 Plaintiff,

8 v.

9 The Siegel Group Nevada Inc.; et al.,

10 Defendants.

Case No. 2:24-cv-02265-APG-DJA

Report and Recommendation

11 The Court recommends dismissing this action because Plaintiff has not complied with the
12 Court's order requiring him to file an updated application to proceed *in forma pauperis* or pay the
13 filing fee and requiring him to update his address. (ECF No. 15). The Court further recommends
14 denying Plaintiff's pending motion. (ECF No. 17). That motion is titled a "request [for]
15 electronic access to the court" but actually seeks a temporary restraining order. (*Id.*). Regardless
16 of what relief the motion actually seeks, Plaintiff has not demonstrated that he is entitled to either
17 electronic access or a temporary restraining order.

18 **I. Dismissing this action.**

19 On February 24, 2025, the Court gave Plaintiff until March 26, 2025, to file an updated
20 application to proceed *in forma pauperis* or pay the filing fee. (ECF No. 15). The Court also
21 ordered Plaintiff to update his address on or before March 26, 2025. (*Id.*). In doing so, the Court
22 informed Plaintiff that "[f]ailure to timely comply with this order may result in a
23 recommendation to the district judge that this case be dismissed." (*Id.*) (emphasis in
24 original). That date has passed, and Plaintiff has not filed an application to proceed *in forma*
25 *pauperis* or paid the filing fee. He has also not updated his address and his mail has been
26 returned as undeliverable. (ECF No. 18). So, the Court recommends dismissal of this case.

27 The broad, underlying purpose of the Federal Rules of Civil Procedure is to "secure the
28 just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

1 The rules provide several mechanisms that allow courts to accomplish this goal through the use of
2 sanctions against parties that fail to comply with court orders or that unnecessarily multiply
3 proceedings. *Dollar v. Las Vegas Metropolitan Police Dep't*, No. 2:15-cv-00712-APG-CWH,
4 2017 WL 3666301, at *1-2 (D. Nev. Aug. 24, 2017). Federal Rule of Civil Procedure 16 is the
5 central pretrial rule that authorizes courts to manage their cases “so that disposition is expedited,
6 wasteful pretrial activities are discouraged, the quality of the trial is improved, and settlement is
7 facilitated.” *In re Phenylpropanolamine Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006).
8 Specifically, Rule 16(f) “puts teeth into these objectives by permitting the judge to make such
9 orders as are just for a party’s failure to obey a scheduling or pretrial order, including dismissal.”
10 *Id.* Rule 16(f) provides in relevant part that “[o]n motion or on its own, the court may issue any
11 just orders, including those authorized by Rule 37(b)(2)(A)(ii)–(vii), if a party or its attorney ...
12 fails to obey a scheduling order or other pretrial order.” Fed. R. Civ. P. 16(f)(1).

13 Potential sanctions under Rule 37(b)(2)(A) include striking pleadings and dismissing an
14 action. Fed. R. Civ. P. 37(b)(2)(A)(iii), (v). “Courts are to weigh five factors in deciding whether
15 to dismiss a case for failure to comply with a court order: (1) the public’s interest in expeditious
16 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
17 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
18 availability of less drastic sanctions.” *In re Phenylpropanolamine*, 460 F.3d at 1226. It is within
19 the court’s discretion whether to impose dismissal sanctions. *Id.*

20 Here, the first two factors weigh in favor of terminating sanctions. Plaintiff has not
21 complied with this Court’s order, which is inconsistent with Rule 1’s directive to “secure a just,
22 speedy, and inexpensive” determination of this action. Plaintiff’s failures to comply with the
23 Court’s order has also interfered with the Court’s management of its docket. The third and fourth
24 factors also weigh in favor of terminating sanctions. Given that Plaintiff has not paid the filing
25 fee or applied to proceed *in forma pauperis*, their case has not proceeded to the service stage and
26 there are no active defendants in this case. And the Court cannot reach the merits of this case if
27 Plaintiff does not pay the filing fee or apply to proceed *in forma pauperis*. Finally, sanctions less
28 drastic than terminating sanctions are unavailable because Plaintiff has failed to comply with a

1 Court order. So, the Court has no reason to believe that Plaintiff would comply with future court
2 orders. Moreover, if Plaintiff does not update his address, the Court cannot reliably communicate
3 with Plaintiff. So, the Court recommends dismissal of this action without prejudice. A dismissal
4 without prejudice allows Plaintiff to refile a case with the Court, under a new case number.

5 **II. Denying Plaintiff's motion.**

6 The Court also recommends denying Plaintiff's pending "motion to request electronic
7 access to the Court." (ECF No. 17). While Plaintiff's document is titled a "motion to request
8 electronic access to the court," his motion does not seek that relief. Instead, the body of his
9 motion asks the Court to issue a temporary restraining order. However, regardless of which relief
10 Plaintiff actually seeks, he has not shown that he is entitled to that relief.

11 Plaintiff has not actually sought the Court's authorization to register as an electronic filer.
12 *See* LR IC 2-1. And simply titling his document as requesting this relief is not sufficient to
13 actually request it. *See* LR 7-2(a) (explaining that motions must be supported by a memorandum
14 of points and authorities); *see In re Cohen*, 656 B.R. 798, 805 (B.A.P. 9th Cir. 2023) ("it is the
15 substance, not the caption or label of a motion, which determines how a motion should be
16 construed"); *see United States ex rel. Hoggett v. University of Phoenix*, 863 F.3d 1105, 1108 (9th
17 Cir. 2017) (explaining that "[a] motion's nomenclature is not controlling" and that courts "must
18 therefore look to the substance, not simply the title," of a motion) (internal citations and
19 quotations omitted). So, the Court recommends denying his motion to the extent he requests
20 authorization to register as an electronic filer.

21 Plaintiff has also not shown that he is entitled to a temporary restraining order because he
22 has not shown likelihood of success on the merits, that he is likely to suffer irreparable harm in
23 the absence of preliminary relief, that the balance of equities tips in his favor, and that an
24 injunction is in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
25 (2008); *see Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.Supp. 1320, 1323
26 (N.D. Cal. 1995) (explaining that the standard for issuing a temporary restraining order is
27 identical to the standard for issuing a preliminary injunction). Instead, Plaintiff's assertions in his
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1 motion are largely conclusory and reference vague pieces of evidence that he does not attach. So,
2 the Court recommends denying his motion to the extent he requests a temporary restraining order.

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4 **RECOMMENDATION**

5 **IT IS THEREFORE RECOMMENDED** that Plaintiff's case be **dismissed** without
6 prejudice and his motion filed at ECF No. 17 be **denied**. The Clerk of Court is kindly directed to
7 send Plaintiff a copy of this report and recommendation.

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9 **NOTICE**

10 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be
11 in writing and filed with the Clerk of the Court within fourteen (14) days after service of this
12 Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has
13 been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474
14 U.S. 140, 142 (1985) *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that
15 (1) failure to file objections within the specified time and (2) failure to properly address and brief
16 the objectionable issues could waive the right to appeal the District Court's order and/or appeal
17 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
18 1991); *see Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983); *see Miranda*
19 *v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012).

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21 DATED: April 16, 2025

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23 DANIEL J. ALBRECHTS
24 UNITED STATES MAGISTRATE JUDGE
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